

FEB 15 2018



February 12, 2018

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Peter G. Watson  
President and Chief Executive Officer  
Greif Packaging LLC  
425 Winter Road  
Delaware, OH 43015

Greif Packaging, LLC  
Jin Dulai & Farrell Smith  
General Manager  
2400 Cooper Avenue  
Merced, California 95344

United Agent Group Inc.  
Greif Packaging LLC  
Noel Carter/Deandra Alcavar  
Agents for Service of Process  
1430 Truxtun Avenue, 5<sup>th</sup> Floor  
Bakersfield, CA 93301

**RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Watson,

This firm represents San Joaquin Raptor/Wildlife Rescue Center and Protect Our Water ("SJR/WRC & POW"), a California non-profit corporation and a California non-profit association respectively, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at the Greif Packaging LLC facility in Merced California, a steel drum and packaging manufacturing plant located at 2400 Cooper Avenue, Merced, California 95344 (the "Facility") with Waste Discharger Identification Number (WDID) 5F24I021710. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility. Unless otherwise noted, Greif Packaging LLC. shall hereinafter be referred to as "Greif Packaging," and Peter Watson, Jin Dulai, and Farrell Smith shall collectively be referred to as the "Owners/Operators." SJR/WRC & POW are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources throughout the state of California, with special emphasis on the Central Valley including the San Joaquin River, Bear Creek and Black Rascal Creek.

Greif Packaging is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.*; and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES")

General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").

The 1997 General Permit was in effect between 1997 and June 30, 2015, and the 2015 General Permit went into effect on July 1, 2015. As will be explained below, the 2015 General Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 General Permit. Violations of the General Permit constitute ongoing violations for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate violation of the CWA occurring before November 2, 2015 commencing five years prior to the date of this Notice of Violation and Intent to File Suit subjects Greif Packaging to a penalty of up to \$37,500 per day; violations occurring after November 2, 2015 and assessed on or after August 1, 2016 subjects Greif Packaging to a penalty of up to \$51,570 per day. In addition to civil penalties, SJRWRC & POW will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) of the Act (33 U.S.C. §§ 1365(a), (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. See 40 C.F.R. 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, SJRWRC & POW intends to file suit under Section 505(a) of the Act (33 U.S.C. § 1365(a)) in federal court against Greif Packaging for violations of the Act and the General Permit.

## **I. Background**

### **A. The Clean Water Act**

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco*

*Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board Water Resource Control Board ("State Board") to issue individual and general NPDES permits in California. 33 U.S.C. § 1342. The State Board coordinates with the Central Valley Regional Water Quality Control Board ("Regional Board"), which has shared jurisdiction over the Facility for state and federal water pollution control efforts.

#### **B. California's General Permit for Storm Water Discharges Associated with Industrial Activities**

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which SJRWRC & POW refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ, the General Permit was reissued, including many of the same fundamental terms as the prior permit. For the purposes of this notice letter, SJRWRC & POW refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for the purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge

prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements. Beginning under the 2015 General Permit Facilities must submit Exceedance Response Action Plans ("ERA Report") to the State Board outlining effective plans to reduce pollutants if a Facility reports a pollutant above the Numeric Action Level ("NAL"). An annual NAL exceedance occurs when the average of all the analytical results for a parameter from samples taken within a reporting year exceeds the annual NAL value for that parameter. An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value or are outside of the instantaneous maximum NAL range for pH. 2015 General Permit XII.A.

### **C. Greif Packaging's Industrial Facility**

The Greif Packaging Facility is located at 2400 Cooper Ave in Merced California. The Facility's general purpose consists of steel drum manufacturing and shipping of finished product. The Facility operates Monday through Friday 7:00AM to 5:00PM. Industrial activities occur consistently during operating hours.

The Facility's Notice of Intent to Comply with the General Permit ("NOI") was not available on the State Board's Storm Water Multiple Application and Report Tracking System ("SMARTS"), but the Facility's Storm Water Pollution Prevention Plan ("SWPPP") established that Greif Packaging operates under Standard Industrial Classification ("SIC") Code 3412 – Metal Shipping Barrels, Drums, Kegs, and Pails.

Under SIC Code 3412 the General Permit requires Greif Packaging to analyze storm water samples for Total Suspended Solids ("TSS"), pH, Oil and Grease ("O&G"), Aluminum ("Al"), Zinc ("Zn"); Nitrate +Nitrite Nitrogen ("N+N"); and Iron ("Fe"). Facilities must also sample and analyze for additional parameters identified on a facility specific basis to reflect pollutant a source assessment, due to receiving water impairments, or as required by the Regional Board. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6.

Industrial operations at the Facility consist of the manufacture of industrial packaging products and services related to the packaging industry. The Facility's primary engagement is the manufacture of steel drums, more specifically 5% galvanized steel drums and 5% tin-plate steel drums. Raw ingredients are delivered to the loading docks and the Paint Shed along the west side of the Facility. Some raw materials, production materials, and equipment are stored outside. Unused equipment is periodically stored along the east side of the Production Building. Recently unloaded production materials are stored adjacent to the loading dock west of the office. The Facility includes above ground storage tanks with a total capacity of 6,500 gallons. Materials exposed to storm water include the outdoor storage areas, scrap bins,

vehicles, above ground storage tanks, roof structures, and fugitive dust. Metal shelving and metal scrap bins may be a potential source of metals in storm water.

Most manufacturing activities and industrial process occur inside the main Production Building. Exhaust fans on the roof of the Production Building and unpaved areas of the Facility have the potential to generate polluted dust from the manufacturing processes, and vehicle travel and other unpaved area disturbance. Pollutants including metal particulates may be deposited onto the roof and discharged with storm water. Track out from the Production Building and other tracking of sediment onto the pavement from unpaved areas are likely contributing to metals and suspended solids in the Facility's storm water discharges. The roof and gutter system of the Production Building are composed of galvanized metal, and discharge storm water to the west side of the Production Building. Other pollutant sources on site at the Facility include but are not limited to, sediment buildup in the storm water drainage systems, and any filtration systems, dust from daily operations throughout the site, fine particles from daily operations collecting on roofs, other surfaces, and deposited throughout the Facility and off the Facility through aerial deposition.

Approximately half of the Facility site is paved or covered by building structures. The main Production Building is located along the east side of the property and is surrounded by a paved access road and parking areas. Employee parking and the office building are located in the northwest corner of the Facility. The delivery truck entrance is at the northwest corner of the main Production Building. Trucks travel counter-clockwise along road circling the Facility. The shipping and receiving dock is located along the west side of the Production Building, adjacent to employee parking and trailer storage areas. Materials are also delivered to and stored within in the Paint Shed located near the southwest corner of the Production Building. An unused rail spur bisects the property from the south.

The large structures at the Facility have metal roofing. New gutters and down spouts were installed in 2014. Lab data from samples collected directly from a Production Building downspout in the office breezeway during an April 14, 2016 rain event indicated a high concentration of Zinc at 9.4 milligrams per liter ("mg/L"). Storm water samples were taken again on December 15, 2016, from ten downspouts along the northwest side of the Production Building and two downspouts from the Office Building with laboratory results indicating that roof runoff is a significant contributing source of Zinc to the Facility's storm water discharges. Neither of these sampling events were reported to the State Board.

Some maintenance of industrial equipment is performed outside, north of the Paint Shed. Finished product is loaded from docking bays at the Facility into delivery trucks. Contractors deliver fuel to the Facility used to power industrial manufacturing equipment weekly. Process waste water from manufacturing processes is said to



discharge to an Effluent Pit where the process water undergoes a pH adjustment prior to discharge to the City of Merced waste water sewage system.

Finished product is stored outdoors prior to shipping next to the loading ramp. Other outdoor storage areas are located next to the Paint Shed along the east side of the Production Building. During the dry season, empty trailers are stored in the unpaved trailer area in the southwest portion of the property. Vehicle maintenance is performed onsite by contractors.

Manufacturing wastes at the Facility consists of effluent sludge, used oil, washer solution, latex paint, plant debris, and absorbent oil. Hazardous wastes at the Facility consist of sodium hydroxide, potassium hydroxide, methyl ethyl ketone, and methyl isobutyl ketone.

Hazardous materials are stored in in the Paint Shed, within a containment berm along the southeastern side of the Production Building, and in designated areas inside the Production Building. Hazardous waste is disposed off-site. A waste dumpster is located at the southwest corner of the Production Building, adjacent to the loading dock and unpaved area. Metal recycling bins are located in the northeast corner of the Facility. Cardboard and pallet recycling are located in the southwest corner of the parking area.

Storm water runoff discharges to the Merced Storm Sewer System via three outfalls to the north of the Facility site. Storm water runoff from paved areas flows to twelve onsite drop inlets, ten of which direct storm water to the City system on Cooper Avenue via the three outfalls described above, which is then discharged to Black Rascal Creek less than a quarter mile to the northwest. Black Rascal Creek connects to Bear Creek, Bear Creek is less than a half a mile to the south of the Facility. Bear Creek and Black Rascal Creek are waters of the United States within the meaning of the CWA.

Storm water samples are collected at the outfalls further described here as Discharge Point 1 at the central north section of the Facility, Discharge Point 2 in the northwest of the Facility, and Discharge Point 3 at the northeast end of the Facility. B

Discharge Point 1 collects storm water via a subsurface storm water system from the paved western side of the Production Building including the Office Building, loading/unloading areas, roof drains, visitor parking, outdoor storage areas, and the Facility's main entrance and exit. Discharge Point 2 collects storm water from the Facility generated along the Facility border with Cooper Avenue. Storm water flows from the trailer parking lot, outdoor storage areas and the employee parking lot to Discharge Point 2.

Discharge Point 3 collects storm water from the northeast of the Facility and carries storm water from the Production Building loading bay, equipment storage areas,

scrap metal recycling storage area, and the northeast truck exit. Roof drains at the northeast of the building connect to a subsurface drain in this drainage area. The Owners/Operators previously believed that the drain lines along the east side of the Facility were connected to Discharge Point 1 underneath the Production Building. An investigation in September 2016, indicated that the east portion of the Facility drains north through a subsurface pipe system to the drainage area services Discharge Point 3. Further investigation from January 2017 established that the Facility's east side underground drainage system at Discharge Point 3 drained north separately to the City of Merced's storm drain system. Thus, until January of 2018 no representative storm water samples were taken from this drainage area.

## **II. Greif Packaging's Violations of the Act and the General Permit**

Based on its review of available public documents, SJRWRC & POW is informed and believes that Greif Packaging is in ongoing violation of both the substantive and procedural requirements of the CWA, and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, Greif Packaging is subject to penalties for violations of the Act since February 12, 2013. SJRWRC & POW expects to identify additional storm water pollutant discharges in violation of the CWA through further investigation of the Facility.

### **A. Greif Packaging Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations**

Greif Packaging's storm water sampling results provide conclusive evidence of its failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

#### **1. Applicable Water Quality Standards**

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit,

Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The *Water Quality Control Plan for the Central Valley Region* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to Greif Packaging's storm water discharges. The Basin Plan includes a narrative toxicity standard which states that "(a)ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." The Basin Plan's Water Quality Standards for Central Valley require a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).

## **2. Applicable Effluent Limitations**

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by Greif Packaging: Total Suspended Solids – 100 mg/L; Oil & Grease – 15 mg/L; pH – 6-9 s.u., Aluminum – 0.75 mg/L, Zinc 0.117 mg/L, Nitrate + Nitrite Nitrogen – 0.68 mg/L, and Iron – 1 mg/L. Again, the Basin Plan's Water Quality Standards for Central Valley require a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).



### 3. Greif Packaging's Storm Water Sample Results

Except as provided in Section XI.C.4 of the 2015 General Permit, samples shall be collected from each drainage area at all discharge locations. The samples must be:

a. Representative of storm water associated with industrial activities and any commingled authorized non-storm water discharges; or, b. Associated with the discharge of contained storm water.

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations, and effluent limitations of the Permit.

#### a. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

| Date      | Discharge Point    | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
|-----------|--------------------|-----------|-----------------------------------|----------------------------|
| 2/19/2013 | TBD *              | TSS       | 242                               | 100                        |
| 3/11/2016 | Parking Lot (DP-2) | TSS       | 110                               | 100                        |
| 2/7/2017  | DP-2               | TSS       | 140                               | 100                        |
| 1/8/2018  | DP-2               | TSS       | 110                               | 100                        |

#### b. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

| Date       | Discharge Point    | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
|------------|--------------------|-----------|-----------------------------------|----------------------------|
| 3/11/2016  | Parking Lot (DP-2) | Al        | 3.1                               | 0.75                       |
| 10/28/2016 | DP-2               | Al        | 2.7                               | 0.75                       |
| 1/8/2018   | DP-1               | Al        | 4.5                               | 0.75                       |
| 12/8/2016  | DP-2               | Al        | 3.7                               | 0.75                       |
| 2/7/2017   | DP-2               | Al        | 5.3                               | 0.75                       |

\* Discharge Point information was unavailable from the State Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") and will be discovered via Public Records Act request or through discovery.

| 2/16/2017 | DP-1                    | Al        | 2.2                               | 0.75                       |
|-----------|-------------------------|-----------|-----------------------------------|----------------------------|
| Date      | Discharge Point         | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
| 2/16/2017 | DP-2                    | Al        | 1.8                               | 0.75                       |
| 1/8/2018  | DP-2                    | Al        | 7.6                               | 0.75                       |
| 1/4/2016  | 1 NW Parking Lot (DP-2) | Al        | 4.9                               | 0.75                       |
| 12/8/2016 | DP-1                    | Al        | 2.7                               | 0.75                       |
| 3/11/2016 | Parking Lot (DP-2)      | Al        | 3.1                               | 0.75                       |

**c. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value**

| Date       | Discharge Point           | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
|------------|---------------------------|-----------|-----------------------------------|----------------------------|
| 10/28/2016 | DP-2                      | Fe        | 2.4                               | 1.0                        |
| 1/8/2018   | DP-1                      | Fe        | 6.2                               | 1.0                        |
| 12/8/2016  | DP-2                      | Fe        | 3                                 | 1.0                        |
| 2/7/2017   | DP-2                      | Fe        | 10                                | 1.0                        |
| 2/16/2017  | DP-1                      | Fe        | 2.8                               | 1.0                        |
| 2/16/2017  | DP-2                      | Fe        | 2.2                               | 1.0                        |
| 1/8/2018   | DP-2                      | Fe        | 8.7                               | 1.0                        |
| 3/11/2016  | Parking Lot (DP-2)        | Fe        | 3.3                               | 1.0                        |
| 1/4/2016   | 1 NW Parking Lot (DP-2)   | Fe        | 5.7                               | 1.0                        |
| 12/8/2016  | DP-1                      | Fe        | 3.1                               | 1.0                        |
| 10/1/2015  | Office Storm Drain (DP-1) | Fe        | 1.1                               | 1.0                        |

**d. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value (does not include downspout testing performed by the Facility in 2016)**

| Date     | Discharge Point | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
|----------|-----------------|-----------|-----------------------------------|----------------------------|
| 1/8/2018 | DP-1            | Zn        | 3.4                               | 0.117                      |
| 1/8/2018 | DP-3            | Zn        | 2.6                               | 0.117                      |

| 1/8/2018   | DP-2                    | Zn        | 0.25                              | 0.117                      |
|------------|-------------------------|-----------|-----------------------------------|----------------------------|
| Date       | Discharge Point         | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
| 2/16/2017  | DP-1                    | Zn        | 3.9                               | 0.117                      |
| 2/7/2017   | DP-2                    | Zn        | 0.17                              | 0.117                      |
| 10/28/2016 | DP-1                    | Zn        | 6.3                               | 0.117                      |
| 12/8/2016  | DP-1                    | Zn        | 1.6                               | 0.117                      |
| 3/11/2016  | Parking Lot (DP-2)      | Zn        | 0.22                              | 0.117                      |
| 1/4/2016   | Office (DP-1)           | Zn        | 4                                 | 0.117                      |
| 1/4/2016   | 1 NW Parking Lot (DP-2) | Zn        | 0.18                              | 0.117                      |
| 10/1/2015  | Office Storm Drain      | Zn        | 10                                | 0.117                      |
| 12/10/2015 | Front Office (DP-1)     | Zn        | 5.5                               | 0.117                      |
| 3/11/2016  | Front Office (DP-1)     | Zn        | 2.2                               | 0.117                      |

**e. Discharges of Storm Water Containing Nitrate + Nitrite Nitrogen (N+N) at Concentrations in Excess of Applicable EPA Benchmark Value**

| Date      | Discharge Point         | Parameter | Concentration in Discharge (mg/L) | EPA Benchmark Value (mg/L) |
|-----------|-------------------------|-----------|-----------------------------------|----------------------------|
| 1/4/2016  | 1 NW Parking Lot (DP-2) | N+N       | 0.85                              | 0.68                       |
| 2/16/2017 | DP-1                    | N+N       | 0.77                              | 0.68                       |
| 12/8/2016 | DP-1                    | N+N       | 0.70                              | 0.68                       |
| 2/16/2017 | DP-2                    | N+N       | 1.1                               | 0.68                       |

**f. Discharges of Storm Water Containing pH Levels outside the allowable Basin Plan Range/Values**

| Date       | Discharge Point     | Parameter | Result (s.u.) | Basin Plan Limits (s.u.) |
|------------|---------------------|-----------|---------------|--------------------------|
| 12/10/2015 | Front Office (DP-1) | pH        | 6             | 6.5 – 8.5                |

**g. Greif Packaging's Sample Results Are Evidence of Violations of the General Permit**

Greif Packaging's sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations, and effluent limitations set forth above. SJR/WRC & POW is informed and believes that the Greif Packaging has known that its storm water contains pollutants at levels exceeding General Permit standards since at least February 12, 2013.

SJR/WRC & POW alleges that such violations occur each time storm water or non-storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which SJR/WRC & POW alleges that Greif Packaging has discharged storm water containing impermissible levels of TSS, Aluminum, Zinc, Iron, Nitrate + Nitrite Nitrogen, and pH affecting substances in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

Because Greif Packaging recorded averages of testing above Numeric Action Levels ("NAL"), which are equivalent to the standard EPA Benchmark Limits, for Iron, Aluminum and Zinc in both the 2015-16 and 2016-2017 reporting years<sup>1</sup>, the Facility is currently at ERA Level 2 for those parameters in the current reporting year. Nitrate + Nitrite Nitrogen samples were reported above the Annual NAL in the 2016-2017 reporting year putting the Facility into ERA Level 1 for that constituent in the current reporting year. The Facility has not entered ERA Level 1 for Total Suspended Solids, though periodic TSS EPA Benchmark exceedances continue including a result of 140 mg/L in 2017 and 110 mg/L in 2018. Over the last two reporting years, the NAL average exceedances for metals have been at magnitudes well over two times for Aluminum and Iron, with individual samples recorded at or over ten times the NAL. In 2018 an Aluminum sample was reported at 7.6 mg/L. For Zinc, the NAL average of samples during the last two reporting years was over ten times the NAL. One individual sample from October of 2015 was reported at over thirty-eight times the NAL. An unreported downspout sample, as noted in the Facility SWPPP, recorded in April 2016 was 9.4 mg/L and over thirty-six times the NAL.

#### **4. Greif Packaging Has Failed to Implement BAT and BCT**

Dischargers must implement adequate BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. See 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2. Sampling results of magnitudes well in excess of benchmark levels, as reported by Greif Packaging, are evidence that Greif Packaging does not have BMPs that achieve BAT/BCT (*Santa Monica Baykeeper v. Kramer Metals, Inc.* 619 F. Supp. 2d 914. 925 (C.D. Cal., 2009).)

Greif Packaging has failed to implement the minimum BMPs required by the General Permit, including: sufficient good housekeeping requirements; preventive

---

<sup>1</sup> A reporting year under the General Permit runs from July 1 to June 30.

maintenance requirements; aerial deposition control; material handling and waste management requirements; track out and exhaust controls, erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i-x); 2015 General Permit, Sections X.H.1(a-g).

Greif Packaging has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least February 12, 2013.

#### **5. Greif Packaging Has Failed to Develop and Implement an Adequate Storm Water Pollution Plan**

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the State Board's SMARTS system their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

SJR/WRC & POW's investigation indicates that Greif Packaging has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. Greif Packaging has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.



Each day the Owners/Operators failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. The Owners/Operators have been in violation of these requirements at the Facility every day since at least February 12, 2013.

**6. Greif Packaging has Failed to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

Section B(1) and Provision E(3) of the 1997 General Permit required Facility Owners/Operators to develop and implement an adequate Monitoring and Reporting Program. Similarly, Section X.I of the 2015 General Permit requires Facility Owners/Operators to develop and implement a Monitoring Implementation Plan ("MIP"). The primary objective of the monitoring and reporting requirements is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. See 1997 General Permit, Section B(2); 2015 IGP Fact Sheet, Section II.J(1). Monitoring undertaken must therefore determine whether pollutants are being discharged, and whether response actions are necessary, and must evaluate the effectiveness of BMPs. See General Permit, Section I.J(56).

Sections B(5) and B(7) of the 1997 General Permit, and Section XI.A of the 2015 General Permit, require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under XI.B of the 2015 General Permit, the Facility Owners/Operators are required to collect at least two (2) samples from each discharge location at their Facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, O&G, and other pollutants that are likely to be present in the Facility's discharges in significant quantities. See 2015 General Permit, Section XI.B(6).

The Facility Owners/Operators have been conducting operations at the Facility with an inadequately developed, implemented, and/or revised MIP. Upon information and belief, the Facility Owners/Operators have not collected samples from all discharge point each time they have undertaken sampling at the Facility. Based on information available to SJR/WRC & POW, the Facility Owners/Operators have failed to properly collect samples from other discharge locations, including but not limited to Discharge Point 3. This despite sufficient rain events of .1 inch or more recorded nearby in the 2015-2016 and 2016-2017 reporting years. See Exhibit A.

The Facility Owners'/Operators' failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise an MIP that complies with the requirements of Section B and Provision E(3) of the 1997 General Permit and Section XI of the 2015 General Permit. Every day that the Facility Owners/Operators conduct operations in violation of the specific



monitoring requirements of the 1997 General Permit or the 2015 General Permit, or with an inadequately developed and/or implemented MIP, is a separate and distinct violation of the 1997 General Permit or the 2015 General Permit, and the Clean Water Act. The Facility Owners/Operators have been in daily and continuous violation of the General Permit's MIP requirements every day since at least February 12, 2013. These violations are ongoing, and SJR/WRC & POW will include additional violations when information becomes available, including specifically continuing violations of the 2015 General Permit monitoring requirements (see 2015 General Permit, Section XI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 12, 2013.

#### **7. Greif Packaging's Failure to Comply with the General Permit's Reporting Requirements**

Section B(14) of the 1997 General Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 General Permit includes the same annual reporting requirement. See 2015 General Permit, Section XVI.

The Facility Owners/Operators have also submitted incomplete Annual Reports. For instance, the Facility operators must report any noncompliance with the General Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 General Permit, Section C(11)(d). The Facility Owners/Operators did not report their non-compliance as required. Further, Greif Packaging failed to undertake sampling, and report results from every discharge point at the Facility, as required by the General Permit.

Last, the General Permit requires a permittee whose discharges violate the General Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. 1997 General Permit, Receiving Water Limitations C(3) and C(4). Information available to SJR/WRC & POW indicates that the Facility Owners/Operators failed to submit sufficient reports as required by Receiving Water Limitations C(3) and C(4) of the 1997 General Permit. As such, the Owners/Operators are in daily violation of this requirement of the General Permit.

Information available to SJR/WRC & POW indicates that the Facility Owners/Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the General Permit. Information available to SJR/WRC & POW also suggests that ERA Reports submitted by the Facility are insufficient with proposed and implemented BMPs proving ineffective in reducing pollutants to levels compliant with the CWA. As such, the Owners/Operators are in daily violation of the CWA and General Permit. Every day the Facility Owners/Operators conduct operations at the Facility without reporting as required by the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners/Operators have been in daily and continuous violation of the General Permit's reporting requirements every day since at least February 12, 2013. These violations are ongoing, and SJR/WRC & POW will include additional violations when information becomes available, including specifically violations of the 2015 General Permit reporting requirements (see 2015 General Permit, Section XVI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 12, 2013.

### **III. Persons Responsible for the Violations**

SJR/WRC & POW puts Greif Packaging on notice that it is the entity responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, SJR/WRC & POW puts Greif Packaging on formal notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Party**

The name, mailing address, and telephone number of the noticing party is as follows:

Lydia Miller, President  
San Joaquin Raptor/Wildlife Rescue Center  
P.O. Box 778 Merced, CA 95341  
209-723-9283  
sjrrc@sbcglobal.net

### **V. Counsel**

SJR/WRC & POW has retained legal counsel to represent it in this matter. Please direct all communications to:



Anthony M. Barnes  
Aqua Terra Aeris (ATA) Law Group  
828 San Pablo Ave, Ste 115B  
Albany, CA 94706  
(917) 371-8293  
amb@atalawgroup.com

## **VI. Conclusion**

SJR/WRC & POW believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against Greif Packaging and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony M. Barnes', with a long horizontal flourish extending to the right.

---

Anthony M. Barnes  
ATA Law Group  
Counsel for San Joaquin Raptor/Wildlife  
Rescue Center and Protect Our Water



**SERVICE LIST**

***VIA CERTIFIED MAIL RETURN RECIEPT REQUESTED***

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Alexis Strauss, Acting Regional  
Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Pamela C. Creedon, Executive Officer  
Central Valley Regional Water Quality  
Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114

Jeff Sessions  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

**EXHIBIT A**

Rain Data: USW00023257 Merced Municipal Airport, CA US

2-12-2013 - 2-3-2018

Days with Precipitation over .1

| Date       | Precipitation<br>(Inches) |
|------------|---------------------------|
| 2/19/2013  | 0.33                      |
| 3/6/2013   | 0.19                      |
| 3/30/2013  | 0.17                      |
| 3/31/2013  | 0.3                       |
| 4/4/2013   | 0.41                      |
| 10/9/2013  | 0.1                       |
| 11/20/2013 | 0.53                      |
| 12/7/2013  | 0.28                      |
| 1/30/2014  | 0.31                      |
| 2/6/2014   | 0.27                      |
| 2/7/2014   | 0.15                      |
| 2/8/2014   | 0.1                       |
| 2/26/2014  | 0.5                       |
| 2/28/2014  | 0.45                      |
| 3/2/2014   | 0.29                      |
| 3/6/2014   | 0.26                      |
| 3/26/2014  | 0.11                      |
| 3/29/2014  | 0.49                      |
| 4/1/2014   | 0.2                       |
| 4/25/2014  | 0.24                      |
| 10/31/2014 | 0.64                      |
| 11/1/2014  | 0.22                      |
| 11/13/2014 | 0.23                      |
| 11/29/2014 | 0.16                      |
| 12/2/2014  | 0.66                      |
| 12/3/2014  | 0.2                       |
| 12/11/2014 | 0.6                       |
| 12/12/2014 | 1.26                      |
| 12/15/2014 | 0.18                      |
| 12/16/2014 | 0.21                      |
| 2/6/2015   | 0.31                      |
| 2/7/2015   | 0.43                      |
| 2/8/2015   | 0.28                      |
| 3/11/2015  | 0.11                      |
| 4/7/2015   | 0.34                      |
| 4/25/2015  | 0.73                      |
| 5/7/2015   | 0.56                      |



| Date       | Precipitation<br>(Inches) |
|------------|---------------------------|
| 5/14/2015  | 0.18                      |
| 10/1/2015  | 0.11                      |
| 10/28/2015 | 0.18                      |
| 11/2/2015  | 1.04                      |
| 11/8/2015  | 0.18                      |
| 11/9/2015  | 0.16                      |
| 11/24/2015 | 0.21                      |
| 12/10/2015 | 0.11                      |
| 12/13/2015 | 0.14                      |
| 12/19/2015 | 0.35                      |
| 12/21/2015 | 0.34                      |
| 12/22/2015 | 0.35                      |
| 12/24/2015 | 0.17                      |
| 1/5/2016   | 0.63                      |
| 1/6/2016   | 0.6                       |
| 1/18/2016  | 0.76                      |
| 1/19/2016  | 1.01                      |
| 1/22/2016  | 0.66                      |
| 1/23/2016  | 0.13                      |
| 1/31/2016  | 0.34                      |
| 2/17/2016  | 0.28                      |
| 2/18/2016  | 0.12                      |
| 3/3/2016   | 0.13                      |
| 3/4/2016   | 0.54                      |
| 3/5/2016   | 0.53                      |
| 3/6/2016   | 0.14                      |
| 3/11/2016  | 0.4                       |
| 3/13/2016  | 0.57                      |
| 4/8/2016   | 1.61                      |
| 4/9/2016   | 0.77                      |
| 4/22/2016  | 0.22                      |
| 4/27/2016  | 0.92                      |
| 10/16/2016 | 0.18                      |
| 10/28/2016 | 1.03                      |
| 11/20/2016 | 0.19                      |
| 11/26/2016 | 0.32                      |
| 11/27/2016 | 0.3                       |
| 12/8/2016  | 0.34                      |
| 12/10/2016 | 0.42                      |
| 12/15/2016 | 0.6                       |
| 12/23/2016 | 0.47                      |
| 1/3/2017   | 0.25                      |



| <b>Date</b> | <b>Precipitation<br/>(Inches)</b> |
|-------------|-----------------------------------|
| 1/4/2017    | 0.44                              |
| 1/5/2017    | 0.2                               |
| 1/7/2017    | 0.57                              |
| 1/8/2017    | 1.38                              |
| 1/9/2017    | 0.36                              |
| 1/10/2017   | 0.7                               |
| 1/12/2017   | 0.29                              |
| 1/18/2017   | 0.56                              |
| 1/20/2017   | 0.56                              |
| 1/22/2017   | 0.14                              |
| 2/2/2017    | 0.16                              |
| 2/3/2017    | 0.4                               |
| 2/5/2017    | 0.22                              |
| 2/6/2017    | 0.18                              |
| 2/7/2017    | 0.55                              |
| 2/9/2017    | 0.48                              |
| 2/10/2017   | 0.35                              |
| 2/17/2017   | 0.56                              |
| 2/20/2017   | 0.51                              |
| 3/5/2017    | 0.16                              |
| 3/20/2017   | 0.25                              |
| 3/22/2017   | 0.43                              |
| 3/25/2017   | 0.18                              |
| 3/26/2017   | 0.11                              |
| 4/7/2017    | 0.28                              |
| 4/8/2017    | 0.15                              |
| 4/13/2017   | 0.16                              |
| 4/16/2017   | 0.13                              |
| 4/18/2017   | 0.33                              |
| 5/31/2017   | 0.19                              |
| 10/20/2017  | 0.15                              |
| 11/16/2017  | 0.64                              |
| 11/27/2017  | 0.17                              |
| 1/4/2018    | 0.23                              |
| 1/6/2018    | 0.14                              |
| 1/8/2018    | 0.13                              |
| 1/9/2018    | 0.5                               |
| 1/19/2018   | 0.16                              |
| 1/25/2018   | 0.12                              |